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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,956

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EXAMINER

RECEK, JASON D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,956	Applicant(s) LOHMAR ET AL.	
	Examiner JASON RECEK	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 22-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to the amendment filed on June 30th 2009.

Status of Claims

Claims 20-21 have been cancelled per applicant's amendment.

Claims 1-16 and 22-27 are pending but rejected under 35 U.S.C. 103(a).

Claims 22-24 are rejected under 35 U.S.C. 101.

Claims 1-16 and 27 are rejected under 35 U.S.C. 112, second paragraph.

Claims 22 and 26 are objected to.

Response to Arguments

1. Applicant's arguments with respect to the 101 rejection have been fully considered but they are not persuasive.

Applicant states that claims 22-24 have been amended to claim statutory subject matter (pg. 8). However applicant has merely amended the word apparatus to "broadcaster". The specification does not contain a limiting definition of the term broadcaster and therefore this amendment does not overcome the 101 rejection. For the same reasons given previously, the "units" recited by the claim could be entirely software (Specification pg. 7 ln. 1-10). Software per se is not patentable subject matter.

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2. Applicant's arguments, see pg. 8-9, with respect to the rejection(s) of claim(s) 1 and 22 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Takagi et al. US 2002/0065842 A1.

3. Applicant's arguments (pg. 9) have raised a 112 issue. Applicant states "the clients communicate with the server proxies **and not with the broadcaster**" (pg. 9). However the claim preamble states "broadcasting content data from a broadcaster to a plurality of clients". Thus it is now unclear in view of applicant's statement whether or not the client and broadcaster communicate. Please see the 112 rejection below.

Claim Objections

4. Claim 22 is objected to because of the following informalities: the term "the apparatus" in line two does not have proper antecedent basis. Appropriate correction is required.

5. Claim 26 is objected to because of the following informalities: the word "ofr" in line four is misspelled as well as "fro" in line five. Appropriate correction is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 22-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The “units” recited by the claims can be interpreted as purely software. Software per se is not patentable subject matter.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 1-16 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed 6/30/09. In that paper, applicant has stated “the clients communicate with the server proxies and not with the broadcaster”, and this statement indicates that the invention is different from what is defined in the claim(s) because the claims recite “broadcasting content data from a broadcaster to a plurality of clients” thus indicating that the clients are in communication with a broadcaster. Perhaps the claim could be clarified by amending the limitation “simultaneously transmitting the content data to the plurality of clients ...” to explicitly recite what device/where the data was being transmitted from.

9. Claim 27 recites the limitation “the determination unit” in line two. There is insufficient antecedent basis for this limitation in the claim. The claim also recites “contact units” in line two, however four recites “contact unit” please keep term

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consistent, it is unclear whether this claim requires a plurality of contact units or just one, therefore this inconsistency also makes the claim indefinite. Furthermore, the claim recites "a second random selection unit" however there is no first random selection unit. Thus it seems the claim may be missing an essential element if applicant intends the claim to contain two different random selection units. Please recite the additional selection unit or eliminate the word "second".

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7-16 and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsumi et al. US 2002/0095635 A1 in view of Takagi et al. US 2002/0065842 A1.

Regarding claim 1, Tatsumi discloses "transmitting the content data to the plurality of clients via an unreliable downlink-only communications pathway" as broadcasting data through a broadcasting path (downlink-only) which is not error-free (paragraph 19) and "coupling the plurality of clients to a proxy server to initiate post-processing transactions" clients contain functionality for post processing transactions such as retransmission request (Fig. 1, paragraph 19), "the broadcaster communicating

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with the proxy server to provide sufficient information to handle any of the port-processing transactions requested" (paragraph 20), "determining ... available proxy servers", "randomly selecting" and "contacting ... the selected proxy server" as selecting a path (paragraph 26).

Tatsumi does not explicitly disclose a "a plurality of available proxy servers" or "the plurality of clients is different from the plurality of proxy servers" however this is taught by Takagi as proxy server that is separate from the client and performs post-processing (paragraph 166). The proxy server taught by Takagi is also in bi-directional communication with the client as required by the claims (Fig. 18). Furthermore, in light of the 112 issue Takagi also supports a situation where the client and broadcaster are not in communication as suggested by applicant, the proxy server serves as an intermediary (Fig. 18).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tatsumi with the proxy server taught by Takagi for the purpose of serving clients. Takagi discloses that by using a proxy server post processing of received data may be accomplished which simplifies the data for the user (paragraph 59).

Regarding claim 2, Tatsumi discloses "contact intervals ... specifying the time period in which the proxy servers may be contacted" as specifying a retransmission waiting time (paragraphs 121-124).

Regarding claim 3, Tatsumi discloses “sending ... information pertaining to content data that has or has not been correctly received” (paragraph 117).

Regarding claim 4, Tatsumi discloses “sending ... information to reconstruct the content data” (paragraphs 157-158).

Regarding claim 5, Tatsumi discloses “sending ... a notification that the content data was either successfully or unsuccessfully received” (paragraph 118).

Regarding claim 7, Tatsumi discloses “prompts within the content data” (paragraph 114).

Regarding claim 8, Tatsumi discloses “purchase of an object or service” (paragraph 114).

Regarding claim 9, Tatsumi discloses “a request to obtain additional content data” (paragraph 97).

Regarding claim 10, Tatsumi discloses “a URL within ... the data” (paragraph 65).

Regarding claim 11, Tatsumi does not explicitly disclose “providing, by the broadcaster to each of the proxy servers, at least a portion of the content data” however

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this is taught by Tatsumi as transferring data to the retransmitting (proxy server) for the purpose of retransmitting (paragraph 157). Takagi also teaches this as providing data from the web server (i.e. broadcaster) to the proxy server (Fig. 18).

Regarding claim 12, Tatsumi discloses "information ... is in embedded in the broadcast" (paragraph 64).

Regarding claim 13, Tatsumi discloses "contact intervals ... is embedded in the broadcast" as a receiving end time which indicates the beginning of a contact interval (paragraph 65).

Regarding claim 14, Tatsumi discloses "selection based on an attribute of the plurality of clients" (paragraph 98).

Regarding claim 15, Tatsumi discloses "multicast" (paragraph 68).

Regarding claim 16, Tatsumi does not explicitly disclose "adjusting the number of available proxy servers ... based on the number of post-processing transactions" however it is well known in the art to adjust resources based on usage requirements and thus the modification of Tatsumi to adjust the number of retransmitting stations (proxy servers) based on demand is merely applying that which is well known in the art in order to yield a predictable result (system capability to handle required load).

Regarding claims 22, and 25, they are apparatus claims that correspond to the method of claim 1, therefore they are rejected for similar reasons.

Regarding claim 23, it corresponds to the method of claim 2, therefore it is rejected for similar reasons.

Regarding claim 24, Tatsumi discloses "determines one or more post-processing transactions" as setting a retransmission request permission (paragraph 64).

Regarding claim 26, it corresponds to claim 1 (i.e. determining, selecting, contacting), since those functions are performed by the client. Therefore, the corresponding parts are rejected for similar reasons. Tatsumi also discloses "a reception unit for receiving broadcasted content" (Fig. 6).

Regarding claim 27, Tatsumi discloses "specifying the time period in which the proxy servers may be contacted after the broadcast" start time and end time (paragraph 64), "contact unit contacts the selected proxy server to initiate post-processing at a delay time" contact selection unit for retransmission (i.e. post-processing) at time specified (paragraphs 26, 98), and "selection unit for randomly selecting the delay time" set retransmission waiting time (Fig. 12). This claim is being interpreted as best possible in light of the 112 issues.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsumi and Takagi in view of Hudson et al. US 2003/0204613 A1.

Regarding claim 6, the combination of Tatsumi and Takagi does not explicitly disclose “a digital rights manager” however this is taught by Hudson (paragraph 70). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tatsumi with the DRM taught by Hudson for the purpose of distributing content. A DRM is well known in the art and yields predictable results (as evidenced by Hudson). Thus the combination is merely the combination of known elements according to their established function in order to yields a predictable result.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pendakur et al. US 2005/0060752 A1 discloses a system for correcting data losses from broadcasting (abstract).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON RECEK whose telephone number is (571)270-1975. The examiner can normally be reached on Mon - Fri 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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